

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Urban Benson
Ben Benson
SSN XXX-XX-5360

CASE NO. 04-30735 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. U.S. Bank, N.A. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 13, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on February 11, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$59,867.00, as evidenced by that certain mortgage deed dated August 8, 1997, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated August 8, 1997, executed by Urban Benson (unmarried), recorded on August 14, 1997, as Document No. 216033, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Waseca County, Minnesota and is legally described as follows to-wit:

Lots 1 and 2, Block 2, Carpenter's First Addition to Janesville.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 16, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of June, 2004 through September, 2004, inclusive, in the amount of \$480.04 each for the months of June, 2004 through July, 2004 and \$521.34 each for the months of August, 2004 through September, 2004; accruing late charges of \$80.10 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$72,000.00 subject to Secured Creditor's mortgage in excess of \$60,688.10.

The property is also subject to a second mortgage in favor of Bank One in excess of \$18,830.00.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 16th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

SEP 17 03 10:11A

WASECA ABSTRACT COMPANY

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PST LOFFLER, WASECA CO. TREASURER

Urban Benson

to

DATE Aug 14, 1997

216033-11 pages Firststar Home Mortgage Corporation

REGISTRATION TAX HEREON OF \$ 137.22 PAIDOffice of County Recorder
County of Waseca, MinnesotaTREASURER'S RECEIPT NO. 5825Janet ProcheCOUNTERSIGNED Rep. - COUNTY TREASURERLerrice Harts Deputy

COUNTY AUDITOR

I hereby certify that the within instrument was
filed in this office for record on the 14th
day of AUGUST A.D. 19 97 at
3:25 o'clock P. M and was duly
microfilmed as Document No. 216033Andrea Olson
County Recorder

By _____ Deputy

LOAN: 7810017003

State of Minnesota

(Space Above This Line For Recording Date)

MORTGAGE #118

FHA Case No.

271-766106-1-729

THIS MORTGAGE ("Security Instrument") is given on AUGUST 8, 1997
The Mortgagor is

URBAN BENSON (UNMARRIED)

("Borrower"). This Security Instrument is given to

FIRSTSTAR HOME MORTGAGE CORPORATION

which is organized and existing under the laws of THE STATE OF WISCONSIN, and
whose address is 809 SOUTH 60TH STREET, SUITE 210, WEST ALLIS, WI 53214("Lender"). Borrower owes Lender the principal sum of
FIFTY NINE THOUSAND EIGHT HUNDRED SIXTY SEVEN AND NO/100Dollars (U.S. \$ 59,867.00).This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on SEPTEMBER 1, 2027and for interest at the yearly rate of 6.000 percent. This SecurityInstrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7
to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

FHA Minnesota Mortgage - 4/96

4R(MN) 0731

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Initial: UB

VMP MORTGAGE FORMS - (800)521-7281

EXHIBIT A

216033

under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in WASECA

County, Minnesota:

LOTS 1 AND 2, BLOCK 2, CARPENTER'S FIRST ADDITION TO JANESVILLE.

250

which has the address of 503 WEST 1ST STREET, JANESVILLE
Minnesota 56048

[Street, City],

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "escrow items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

216033

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es)).

☐ Condominium Rider

☐ Growing Equity Rider

☒ Other (specify)

☐ Planned Unit Development Rider

☐ Graduated Payment Rider

ADJUSTABLE RATE RIDER

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Urban Benson
URBAN BENSON

(Seal)
-Borrower

(Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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WASECA ABSTRACT COMPANY

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216033

STATE OF MINNESOTA,

Blue Earth

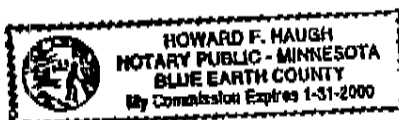
County ss:

On this 8th day of August, 1997, before me appeared

Urban Benson, a single person

to me
personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that
he executed the same as his free act and deed.

My Commission Expires:
(Seal)



Notary Public

This instrument was prepared by ROSE BELANGER
FIRSTAR HOME MORTGAGE CORPORATION
1550 EAST 79TH STREET
BLOOMINGTON, MN 55425

RECORD & RETURN TO: FIRSTAR HOME MORTGAGE CORPORATION
1550 EAST 79TH STREET
BLOOMING ON, MN 55425

4R(MN) (5702)

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Initials: UB

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Urban Benson
Ben Benson
SSN XXX-XX-5360

CHAPTER 13 CASE

CASE NO. 04-30735 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 16, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through September, 2004, in the amount of \$480.04 each for the months of June, 2004 through July, 2004 and \$521.34 each for the months of August, 2004 through September, 2004; accruing late charges of \$80.10 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$72,000.00 subject to Secured Creditor's mortgage in excess of \$60,688.10.

The property is also subject to a second mortgage in favor of Bank One in excess of \$18,830.00.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 16th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Urban Benson
Ben Benson
SSN XXX-XX-5360

CASE NO. 04-30735 DDO

**AFFIDAVIT OF
LISA ROGERS**

Debtor.

Lisa Rogers, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Manager at National Default Servicing Corporation.

2. U.S. Bank, N.A., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated August 8, 1997, executed by Urban Benson (unmarried), recorded August 14, 1997, as Document No. 216033. The property is located in Waseca County, Minnesota and is legally described as follows, to-wit:

Lots 1 and 2, Block 2, Carpenter's First Addition to Janesville.

3. That she has reviewed the account records relating to the Benson mortgage loan, account no. 7810017003.

4. That as of September 8, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$55,888.60
Interest through September 8, 2004	1,315.88
Attorney's Fees:	700.00
Late Charges:	278.33
Other Fees:	94.77
Escrow Advances:	2,480.48
Debtor Suspense (-):	(69.96)

TOTAL:	\$60,688.10
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5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of June, 2004 through July, 2004 in the amount of \$480.04 each and August, 2004 through September, 2004 in the amount of \$521.34 each.

6. This affidavit is given in support of the motion of U.S. Bank, N.A. for relief from the automatic stay.

NATIONAL DEFAULT SERVICING CORPORATION

By

Lisa Rogers

Bankruptcy Outsourcing Manager

Subscribed and sworn to before me
This 8th day of September, 2004.

Notary Public

Eleanor L. Zuccaro



Notary Public State of Arizona
Maricopa County
Eleanor L. Zuccaro
Expires June 16, 2007

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Urban Benson
Ben Benson
SSN XXX-XX-5360

CASE NO. 04-30735 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 16, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Lisa Rogers, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Urban Benson
503 W 1st St
Janesville, MN 56048

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN 55402

Robert J. Winzenburg
PO Box 211
Mankato, MN 56002-0211

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Bank One
PO Box 182223
Columbia, OH 43218

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Urban Benson
Ben Benson
SSN XXX-XX-5360

CASE NO. 04-30735 DDO

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of U.S. Bank, N.A. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 13, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated August 8, 1997, executed by Urban Benson (unmarried), recorded on August 14, 1997, as Document No. 216033 covering real estate located in Waseca County, Minnesota, legally described as follows, to-wit:

Lots 1 and 2, Block 2, Carpenter's First Addition to Janesville

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure

4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court